

AMENDED IN SENATE JUNE 29, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1344

Introduced by Assembly Members Feuer and Alejo
(Coauthor: Assembly Member Portantino)

February 18, 2011

An act to amend Sections 9255 and 9260 of the Elections Code, and to amend Sections 34457, 34458, 54954.2, and 54956 of, to add Section 34458.5 to, to add Article 2.6 (commencing with Section 53243) to Chapter 2 of Part 1 of Division 2 of Title 5 of, and to add Chapter 10.1 (commencing with Section 3511.1) to Division 4 of Title 1 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1344, as amended, Feuer. Local governance.

(1) Existing law requires a charter commission to submit, among other things, a city charter to the voters of a city at either a special election called for that purpose, at any established municipal election date, or at any established election date, provided that there are at least 88 days before the election. Existing law also authorizes the governing body of any city or city and county to, among other things, propose a charter and submit the proposal for the adoption to the voters at either a special election called for that purpose or at any established municipal

election date or at any established election date, provided there are at least 88 days before the election.

This bill would require a city charter or charter amendment, whether submitted to the voters by a charter commission or the governing body of the city or city and county, to be submitted at the next established statewide general, statewide primary, or regularly scheduled municipal election date, provided there are at least 95 days before the election. This bill would also require a proposal to adopt a charter, whether submitted to the voters by a charter commission or the legislative body of a city or city and county to include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including, but not limited to, whether the city council will, pursuant to an adopted charter, have the power to raise its own compensation and the compensation of other city officials without voter approval.

(2) The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees. The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law requires all contracts of employment between an employee and a local agency employer to include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract, with a maximum of 18 months.

This bill would, on and after January 1, 2012, additionally prohibit an employment contract for a local ~~excluded employee~~ *agency executive*, as defined, from ~~including any clause that provides for~~ *providing* an automatic renewal of a contract that provides for an ~~automatic compensation increase, as specified, or an~~ automatic compensation increase in excess of a cost-of-living adjustment *or a maximum cash settlement in excess of certain limits, as specified*. By expanding the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law sets forth the penalties for misuse of public resources or falsifying expense reporting, including, but not limited to, loss of reimbursement privileges, restitution to the local agency, civil penalties for misuse of public resources, and prosecution for misuse of public resources, including imprisonment for 2, 3, or 4 years, and disqualification from holding office, as specified.

This bill would, *on and after January 1, 2012*, require an officer or employee of a local agency who is convicted of a crime involving an abuse of his or her office or position, where the local agency for which the officer and employee was employed expends public funds for the legal criminal defense, *paid leave salary during the investigation, or cash settlement for a terminated contract* of that officer or employee, to pay restitution to the local agency that expended those funds.

(4) The Ralph M. Brown Act *enables the legislative body of a local agency to call both regular and special meetings. The act* requires the legislative body of a local agency to post an agenda containing a brief general description of each item of business to be transacted or discussed at ~~the~~ *a regular* meeting, in a location that is freely accessible to members of the public. The act also requires the presiding officer of the legislative body to deliver written notice to each member of the legislative body, and to each local newspaper of general circulation and radio or television station requesting notice in writing if the presiding officer of the legislative body calls a special meeting.

This bill would require the legislative body, or the presiding officer of the legislative body, to provide notice of each meeting, including special meetings, on the local agency's Internet Web site, if the local agency has one, as specified. *In addition, this bill would prohibit any legislative body from holding a special meeting regarding the salary, salary schedule, or other form of compensation for any local agency executive.*

(5) The bill would express a legislative finding and declaration that, to ensure the statewide integrity of local government, the provisions of the act are an issue of statewide concern and that, therefore, all counties and cities, including charter counties, charter cities, and charter cities and counties, would be subject to the provisions of the bill.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 9255 of the Elections Code is amended to read:

9255. (a) A charter or charter amendment proposed by a charter commission, whether elected or appointed by a governing body, for a city or city and county shall be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election date pursuant to ~~Section 1200~~ Section 1200, 1201, or 1301, provided that there are at least 95 days before the election. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.

(b) The following city or city and county charter proposals shall be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, pursuant to ~~Section 1200~~ Section 1200, 1201, or 1301, provided that there are at least 88 days before the election:

(1) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion.

(2) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.

(3) An amendment or repeal of a city and county charter proposed by a petition signed by 10 percent of the registered voters of the city and county.

(4) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.

(c) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election.

(d) The total number of registered voters of the city or city and county shall be determined according to the county elections official's last official report of registration to the Secretary of State that was effective at the time the notice required pursuant to Section 9256 was given.

SEC. 2. Section 9260 of the Elections Code is amended to read:

9260. The petition shall be in substantially the following form:

Petition for Submission to Voters of Proposed Amendment to the Charter of the City (or City and County) of ____

To the city council (or other legislative body) of the City (or City and County) of ____:

We, the undersigned, registered and qualified voters of the State of California, residents of the City (or City and County) of ____, pursuant to Section 3 of Article XI of the California Constitution and Chapter 2 (commencing with Section 34450) of Part 1 of Division 2 of Title 4 of the Government Code, present to the city council (or other legislative body) of the city (or city and county) this petition and request that the following proposed amendment to the charter of the city (or city and county) be submitted to the registered and qualified voters of the city (or city and county) for their adoption or rejection at the next statewide general, statewide primary, or regularly scheduled municipal election date pursuant to ~~Section 1200~~ *Section 1200, 1201, or 1301*.

The proposed charter amendment reads as follows:

First. (setting forth the text of the amendment) ____ (etc.)

Signature	Printed Name	Residence	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SEC. 3. Chapter 10.1 (commencing with Section 3511.1) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.1. ~~EXCLUDED LOCAL PUBLIC EMPLOYEES~~ *LOCAL AGENCY EXECUTIVES*

3511.1. As used in this chapter, the following definitions apply:

(a) “Compensation” means ~~any of the following:~~ *annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.*

~~(1) Annual salary or stipend.~~

~~(2) Local agency payments to the filer’s deferred compensation or defined benefit plans.~~

~~(3) Automobile and equipment allowances.~~

~~(4) Supplemental incentive and bonus payments.~~

1 ~~(5) Local agency payments to the filer that are in excess of the~~
2 ~~standard benefits that the local agency offers for all other~~
3 ~~employees.~~

4 (b) “Cost-of-living” means the California Consumer Price Index
5 for Urban Wage Earners and Clerical Workers as calculated by
6 the Department of Industrial Relations.

7 ~~(c) “Excluded employee” means any person who is or will be~~
8 ~~employed by, and report directly to, the legislative body of a local~~
9 ~~agency and who is not subject to the Meyers-Milias-Brown Act~~
10 ~~(Chapter 10 (commencing with Section 3500)), Chapter 5~~
11 ~~(commencing with Section 45100) of Part 25 of Division 3 of Title~~
12 ~~2 of the Education Code, or Chapter 4 (commencing with Section~~
13 ~~88000) of Part 51 of Division 7 of Title 3 of the Education Code.~~
14 ~~“Excluded employee” includes any person who performs~~
15 ~~governmental duties for a local agency pursuant to a contract with~~
16 ~~that local agency and any person who is considered an at-will~~
17 ~~employee.~~

18 ~~(d)~~

19 (c) “Local agency” means a county, city, whether general law
20 or chartered, city and county, town, school district, municipal
21 corporation, district, political subdivision, or any board,
22 commission, or agency thereof, or other local public agency.

23 (d) *“Local agency executive” means any person employed by*
24 ~~a local agency who is not subject to the Meyers-Milias-Brown Act~~
25 ~~(Chapter 10 (commencing with Section 3500)), Chapter 5~~
26 ~~(commencing with Section 45100) of Part 25 of Division 3 of Title~~
27 ~~2 of the Education Code, or Chapter 4 (commencing with Section~~
28 ~~88000) of Part 51 of Division 7 of Title 3 of the Education Code,~~
29 ~~and who meets either of the following requirements:~~

30 (1) *The person is the chief executive officer of the local agency.*

31 (2) *The person is the head of a department of a local agency.*

32 3511.2. On or after January 1, 2012, any contract executed or
33 renewed between a local agency and ~~an excluded employee a local~~
34 ~~agency executive~~ shall not provide for ~~any of the following:~~

35 (a) An automatic renewal of a contract that provides for an
36 automatic increase in *the level of* compensation that exceeds ~~the~~
37 ~~a cost-of-living adjustment.~~

38 ~~(c) An automatic increase in compensation that is linked to~~
39 ~~another contract, including an agreement entered into pursuant to~~
40 ~~the Meyers-Milias-Brown Act (Chapter 10 (commencing with~~

1 ~~Section 3500)), Chapter 5 (commencing with Section 45100) of~~
2 ~~Part 25 of Division 3 of Title 2 of the Education Code, or Chapter~~
3 ~~4 (commencing with Section 88000) of Part 51 of Division 7 of~~
4 ~~Title 3 of the Education Code.~~

5 (d)

6 (b) A maximum cash settlement that exceeds the amounts
7 determined pursuant to Article 3.5 (commencing with Section
8 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.

9 SEC. 4. Section 34457 of the Government Code is amended
10 to read:

11 34457. After the charter prepared by the charter commission
12 has been filed in the office of the clerk of the governing body of
13 the city or city and county pursuant to Section 34455, the proposed
14 charter shall be submitted to the voters of the city or city and
15 county at the next established statewide general, statewide primary,
16 or regularly scheduled municipal election date pursuant to ~~Section~~
17 ~~1200~~ *Section 1200, 1201, or 1301* of the Elections Code, provided
18 there are at least 95 days before the election.

19 SEC. 5. Section 34458 of the Government Code is amended
20 to read:

21 34458. As an alternative to the procedure provided for in
22 Sections 34450 to 34457, inclusive, the governing body of any
23 city or city and county, on its own motion may propose or cause
24 to be proposed, amend or cause to be amended, or repeal or cause
25 to be repealed, a charter, and may submit the proposal for the
26 adoption, amendment, or repeal thereof, to the voters at the next
27 established statewide general, statewide primary, or regularly
28 scheduled municipal election date pursuant to ~~Section 1200~~ *Section*
29 *1200, 1201, or 1301* of the Elections Code provided there are at
30 least 88 days before the election.

31 SEC. 6. Section 34458.5 is added to the Government Code, to
32 read:

33 34458.5. A proposal to adopt or amend a charter, whether
34 submitted to the voters pursuant to Section 34457 or 34458, shall
35 include in the ballot description an enumeration of new city powers
36 as a result of the adoption of the charter, including, but not limited
37 to, whether the city council will, pursuant to an adopted charter,
38 have the power to raise its own compensation and the compensation
39 of other city officials without voter approval.

SEC. 7. Article 2.6 (commencing with Section 53243) is added to Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 2.6. Abuse of Office

~~53243. If an officer or employee of a local agency, as defined in Section 54951, is convicted of a crime involving an abuse of his or her office or position, and the local agency for which the officer or employee was employed expended public funds for the legal criminal defense of that officer or employee, the officer or employee shall pay restitution to the local agency that expended those funds.~~

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency, as defined in Section 54951, shall not provide for the permanent retention by the officer or employee of any of the following if the officer or employee is convicted of a crime involving an abuse of his or her office or position:

(a) Public funds for the legal criminal defense of that officer or employee.

(b) Paid leave salary offered by the local agency to the officer or employee pending the investigation.

(c) A cash settlement offered by the local agency for a terminated contract.

SEC. 8. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations

1 adopted in implementation thereof. The agenda shall include
2 information regarding how, to whom, and when a request for
3 disability-related modification or accommodation, including
4 auxiliary aids or services, may be made by a person with a
5 disability who requires a modification or accommodation in order
6 to participate in the public meeting.

7 (2) No action or discussion shall be undertaken on any item not
8 appearing on the posted agenda, except that members of a
9 legislative body or its staff may briefly respond to statements made
10 or questions posed by persons exercising their public testimony
11 rights under Section 54954.3. In addition, on their own initiative
12 or in response to questions posed by the public, a member of a
13 legislative body or its staff may ask a question for clarification,
14 make a brief announcement, or make a brief report on his or her
15 own activities. Furthermore, a member of a legislative body, or
16 the body itself, subject to rules or procedures of the legislative
17 body, may provide a reference to staff or other resources for factual
18 information, request staff to report back to the body at a subsequent
19 meeting concerning any matter, or take action to direct staff to
20 place a matter of business on a future agenda.

21 (b) Notwithstanding subdivision (a), the legislative body may
22 take action on items of business not appearing on the posted agenda
23 under any of the conditions stated below. Prior to discussing any
24 item pursuant to this subdivision, the legislative body shall publicly
25 identify the item.

26 (1) Upon a determination by a majority vote of the legislative
27 body that an emergency situation exists, as defined in Section
28 54956.5.

29 (2) Upon a determination by a two-thirds vote of the members
30 of the legislative body present at the meeting, or, if less than
31 two-thirds of the members are present, a unanimous vote of those
32 members present, that there is a need to take immediate action and
33 that the need for action came to the attention of the local agency
34 subsequent to the agenda being posted as specified in subdivision
35 (a).

36 (3) The item was posted pursuant to subdivision (a) for a prior
37 meeting of the legislative body occurring not more than five
38 calendar days prior to the date action is taken on the item, and at
39 the prior meeting the item was continued to the meeting at which
40 action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

SEC. 9. Section 54956 of the Government Code is amended to read:

54956. (a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or

1 *compensation paid in the form of fringe benefits, of a local agency*
2 *executive, as defined in subdivision (d) of Section 3511.1.*

3 ~~(b)~~

4 (c) For purposes of subdivision (a), the requirement that the
5 agenda be posted on the local agency's Internet Web site, if the
6 local agency has one, shall only apply to a legislative body that
7 meets either of the following standards:

8 (1) A legislative body as that term is defined by subdivision (a)
9 of Section 54952.

10 (2) A legislative body as that term is defined by subdivision (b)
11 of Section 54952, if the members of the legislative body are
12 compensated for their appearance, and if one or more of the
13 members of the legislative body are also members of a legislative
14 body as that term is defined by subdivision (a) of Section 54952.

15 SEC. 10. The Legislature finds and declares that the fiscal
16 integrity and stability of local governmental agencies in this state,
17 including charter cities and charter counties, have a direct impact
18 on the long-term well-being of all the residents of this state. The
19 likelihood of businesses locating to or staying in the state is
20 affected by the perception of a functioning, transparent, and
21 practical governmental structure in the local governmental bodies
22 in California. Therefore, the Legislature finds and declares that to
23 ensure the statewide integrity of local government, the provisions
24 of this act are an issue of statewide concern. Therefore, this act
25 shall apply to all counties and cities, including charter counties,
26 charter cities, and charter cities and counties.

27 SEC. 11. The provisions of this act are severable. If any
28 provision of this act or its application is held invalid, that invalidity
29 shall not affect other provisions or applications that can be given
30 effect without the invalid provision or application.

31 SEC. 12. If the Commission on State Mandates determines
32 that this act contains costs mandated by the state, reimbursement
33 to local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.